

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Adopt Biomethane
Standards and Requirements, Pipeline Open Access
Rules, and Related Enforcement Provisions.

Rulemaking 13-02-008
(Filed February 13, 2013)

**DAIRY CARES REPLY COMMENTS ON ADMINISTRATIVE LAW JUDGE'S
RULING DIRECTING PARTIES TO FILE COMMENTS ON PHASE 4A STAFF
PROPOSAL AND RELATED QUESTIONS**

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July 16, 2021

Attorneys for Dairy Cares

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Pursuant to the Administrative Law Judge’s June 3, 2021 Ruling Directing Parties to File Comments on Phase 4A Staff Proposal (“Staff Proposal”) and Related Questions (“Ruling”), Dairy Cares submits its reply comments responding to issues and recommendations raised in opening comments on the Staff Proposal.

I. The Environmental Benefit of Dairy Digesters is Supported by Studies Conducted by the State of California.

The societal benefits of the dairy digesters are well documented. The Leadership Counsel for Justice and Accountability, Food & Water Watch, and Central California Asthma Collaborative (“Joint Commenters”) claim “factory farm-derived biomethane would be unable to achieve any of these [societal] benefits and would actually harm the environmental values recognized in SB 1440.”¹ This assertion is unsupported and contradicted by the record.

As Dairy Cares and the Agricultural Energy Consumers Association (“AECA”) pointed out in their opening comments, recent reports from the State describe the environmental, climate, social, and public health benefits of dairy renewable natural gas (“RNG”) projects.² The CARB Draft Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane

¹ Leadership Counsel for Justice and Accountability, Food & Water Watch, and Central California Asthma Collaborative Opening Comments, p. 10.

² Agricultural Energy Consumers Association Opening Comments, p. 9.

Emissions Target found “[t]he dairy and livestock sector has the potential to achieve significant methane emissions reduction from manure management operations at relatively low cost compared to other CCI-funded programs.”³ The Analysis also found the avoided damages associated with reducing 1 million metric tons of methane are estimated to be between \$935 million and \$2.46 billion (2020 dollars).⁴ The 2021 California Climate Investments (“CCI”) Annual Report discusses how devoting merely 2.1% of the Greenhouse Gas Reduction Fund to the Dairy Digester Research and Development Program has generated more than 29% of all documented greenhouse gas reductions from all CCI portfolio investments.⁵

Joint Commenters’ claims about dairy water use is also unsupported. Water is scarce in California and growing scarcer as drought conditions persist, and dairies like all water users have a strong incentive to make the most efficient use of their water. Most dairies utilize all water multiple times to sanitize milking equipment, wash cows, and flush barn floors. Water is then recycled a final time to irrigate crops resulting in highly efficient use.

Joint Commenters also claim, “[i]n terms of water pollution costs, factory farms have profound negative effects on local water quality that must be considered as a cost weighing against factory farm biomethane procurement.”⁶ Joint Commenters claim that water quality is worsened by dairy digesters because compounds become more soluble due to anaerobic digestion. That solubility is actually a major benefit to water quality, converting the nutrients to

³ California Air Resources Board, (Draft) *Analysis of Progress toward Achieving the 2030 Dairy and Livestock Sector Methane Emissions Target* (June 2021) [hereinafter CARB 2030 Methane Target Analysis], p. 5, available at: <https://ww2.arb.ca.gov/sites/default/files/2021-06/draft-2030-dairy-livestock-ch4-analysis.pdf>; see also, Dairy Cares Opening Comments, p. 8.

⁴ Agricultural Energy Consumers Association Opening Comments, p. 11 (citing the CARB 2030 Methane Target Analysis, p. 17).

⁵ 2021 CCI Annual Report, Table 2, available at: https://ww2.arb.ca.gov/sites/default/files/classic/cc/capandtrade/auctionproceeds/2021_cci_annual_report.pdf; see also AECA Opening Comments, p. 9.

⁶ Joint Commenters Comments, p. 11.

be more plant-available in a digester makes it easier for plants to use them and reduces losses to the environment, including groundwater, and greatly reduces the need for synthetic fertilizers. Additionally, the California Department of Food and Agriculture’s 2021 Report to the Joint Legislative Budget Committee on the Dairy Digester Research and Development Program states, “[t]he design and construction of digester vessels (e.g., ponds and tanks) under this program must be demonstrated to be protective of surface and ground water quality... These represent the most stringent water and air quality protection standards across the State and must be met by a project regardless of its location in California.”⁷

In sum, Dairy Cares disagrees with the joint Commenters’ contentions regarding the environmental benefits of dairy digester projects. Dairy digester projects provide considerable environmental benefits for California and the climate. Many of the joint Commenters’ comments were raised by the Disadvantaged Community Advisory Group (“DACAG”) in a December 2, 2020 letter to the Commission on Application 19-02-015. Dairy Cares is attaching its response to that letter as Appendix 1, to further document in the record of this proceeding the broad societal and environmental benefit of dairy biomethane projects.

II. SB 1440 Requires Benefits from the “Capture or Production” of the Biomethane.

The Joint IOUs⁸ request that out-of-state sources be available to procure in fulfilling SB 1440 to ensure all customers receive the environmental benefits of biomethane.⁹ As discussed in Dairy Cares’ and The Utility Reform Network’s (“TURN”) opening comments, SB 1440 requires that the environmental benefits received by the state must come from the “capture or

⁷ Report of Funded Projects (2015-2020), p. 9, California Department of Food and Agriculture, available at: https://www.cdfa.ca.gov/oefi/ddrdp/docs/DDRDP_Report_March2021.pdf.

⁸ Pacific Gas & Electric, Southern California Gas Company, San Diego Gas & Electric Company, Southwest Gas Corporation.

⁹ Joint IOUs Opening Comments, p. 8.

production” of the biomethane at the source, not the “utilization” of the biomethane in California.¹⁰ The Commission should not authorize any resources that are unable to meet this requirement to qualify for procurement authorizations.

III. The Commission Should Not Allocate Procurement Costs to Non-Core Customers.

The Commission should not allocate costs of SB 1440 implementation on non-core customers. The Joint IOUs and TURN recommend allocating the above-market costs to non-core customers.¹¹ These parties fail to consider how a 10-30% cost increase impacts non-core customers much differently than core customers.

Non-core customers are generally far more sensitive to changes in commodity costs because they often make very large gas purchases. In addition, many large customers are unable to pass on cost increases to their customers. This is particularly true in the agricultural and food processing sectors. Significant competition in international markets makes it difficult to pass on cost increases, particularly for processors operating in relatively more expensive markets, like California. Many businesses are very concerned that cost increases unique to a particular state (like SB 1440 procurement costs) would significantly exacerbate existing domestic trade pressures. The projected 10-30% cost increase outlined in the Staff Proposal could be very detrimental to competing with out-of-state and global competitors. The Commission should avoid exacerbating domestic leakage risks and reject these parties’ proposals to extend SB 1440 procurement to non-core customers.

The parties supporting a non-core procurement target also fail to consider how a procurement target affects non-core customers very differently than core customers due to the relative amounts of gas purchased by non-core customers. For many core customers, their

¹⁰ Dairy Cares Opening Comments, p. 13; TURN Opening Comments, p. 5.

¹¹ Joint Utilities Opening Comments, pp. 6-7; TURN Opening Comments, p. 5-11.

natural gas bills are not a relatively significant expense in the context of overall household budgets. By contrast, many non-core customers' gas bills are among the most significant variable expenses in companies' overall operating budgets. Thus, a projected 10-30% cost increase would have a much greater impact on a non-core customer's overall budget.

The Staff Proposal states, “[t]he percent of commodity cost in a ratepayer’s bill varies from month to month and generally ranges from 20-25 percent.”¹² The Staff Proposal should be clarified to note that this cost analysis appears to be for typical residential customers, not commercial customers under core rates. For large commercial customers under core rates, the commodity accounts for closer to 50% of their bill, which again would result in a much greater impact than the impacts on typical residential customers. Further, this increased cost would be in addition to increases to transmission rates, which historical trends estimate to increase at 6% annually.¹³ Combining these cost increases could more than double the cost of gas for many commercial customers, including dairy processors.

In sum, the Commission should tread lightly in adopting new standards that will increase costs for any customers. The Commission’s own analysis in its 2020 Rates Analysis makes clear the importance of evaluating affordability in all of the Commission’s rules for the regulated utilities.¹⁴

IV. Conclusion

Dairy Cares appreciates the Commission’s efforts to help implement SB 1440 by making recommendations relating to the establishment of a biomethane procurement program for California gas IOUs. However, the opening comments of nearly all parties recognize the need

¹² Staff Proposal, p. 30.

¹³ See California Electric and Gas Utility Cost Annual Report for 2020, CPUC.

¹⁴ See CPUC Affordability Whitepaper and Rate Analysis (2021).

for a much more robust record development before SB 1440 can be implemented. Significant additional work must be done on biomethane availability and eligibility, cost-effectiveness, cost allocation, and potential ratepayer impacts. Dairy Cares recommends further record development to fully consider these critical issues before any procurement targets are set.

DATED: July 16, 2021

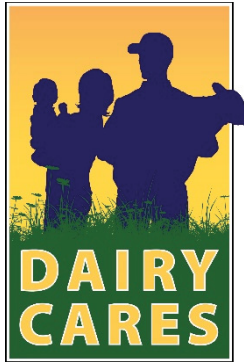
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**Appendix 1: Dairy Cares Response to the Disadvantaged
Communities Advisory Group's Dec. 2, 2020 Letter to
California Public Utilities Commission Commissioners**



December 8, 2020

Stan Greschner, Chair
Disadvantaged Communities Advisory Group (“DACAG”)

Sent via email to: PublicAdvisor@energy.ca.gov, DAC-ag@cpuc.ca.gov

***Re DACAG Dec. 2, 2020 Letter to California Public Utilities Commission
Commissioners***

Dear Mr. Greschner and members of the DACAG,

I am writing on behalf of Dairy Cares¹ in regards to the DACAG’s December 2, 2020 letter to the California Public Utilities Commissioners regarding San Diego Gas & Electric and Southern California Gas Company’s Application 19-02-015. Dairy Cares is not a party to this proceeding and offers no comment on issues that may be pending before the Commission in regards to that Application. However, we received a copy of your December 2nd letter and are deeply concerned with the position taken by DACAG and the broad and unsupported assertion that utility-funded RNG projects would somehow “expand environmental degradation in disadvantaged communities.”

Dairy Cares appreciates the important role the DACAG plays in implementing state climate policy by providing advice on policies that are “effective and useful in disadvantaged communities.”² The purpose of this letter is to provide DACAG with information and sources detailing why its conclusions about California dairy farm operations and the role of incentive programs are incorrect. As discussed below, dairy digester projects provide important economic

¹ Formed in 2001, Dairy Cares (www.dairycares.com) is a coalition of California’s dairy producer and processor organizations, including the state’s largest trade associations representing dairy farmers (California Dairy Campaign, California Farm Bureau Federation, Milk Producers Council and Western United Dairymen), other cattle ranchers (California Cattlemen’s Association) and the largest milk processing companies and cooperatives (including California Dairies, Inc., Dairy Farmers of America-Western Area Council, Hilmar Cheese Company, and Land O’ Lakes, Inc.), and others with a stake in the long-term environmental and economic sustainability of California dairies.

² California Public Utilities Code Sec. 400(g).

and environmental benefits to local communities and will not lead to new or sustained local environmental burdens.

1. *California Dairies Improve Local Economies and Provide Critical Employment.*

Local economic effects should be a core consideration in any advice on policies that are “effective and useful in disadvantaged communities.” The economic benefits of agriculture, and dairies in particular, are well documented. For example, professors at UC Davis recently published results of economic modeling articulating the significant contribution California’s dairy sector provides to multiple facets of local economies. They offered the following assessment of how dairies benefit local communities:

The California dairy industry remains the single largest producer of milk and processed dairy products in the United States accounting for close to 20 percent of all U.S. milk production. Almost all of the milk produced in California is also processed in California, and almost all of the milk processed in California is produced on dairy farms in the state. Much of California processed dairy product quantity and value is shipped out of California in the form of cheese, whey, lactose, milk powders, butter and other processed products and is used globally.

The economic contributions of the dairy industry begin with inputs into milk production on dairy farms. California dairy farms purchase inputs, including feed and services such as nutrition consultation and veterinary treatments, from other industries. These input purchases create indirect economic activity that would not occur in California without the demand from dairy farms. Dairy processing would not occur in California without milk production on farms in the state. Dairy processing companies buy electricity, trucking and hauling services, packaging materials and other items and services from outside industries, which also create a linked chain of indirect economic impacts. In addition to these indirect impacts, income earned by workers, farmers, managers and others in the dairy industry generates consumption of goods and services throughout the economy. For example, dairy farmers may have children that attend local schools that therefore have additional teachers. Similarly, a milk processing plant employee shops for clothing or other which adds to local retail sales and employment. These purchases, in turn, induce even more jobs and more income for those outside the dairy industry. These induced effects spread the impact of the dairy industry throughout the economy into all industries and to workers in every occupation.³

³ Matthews and Sumner, *Economic Contributions of the California Dairy Industry* (April 2019), available at: https://aic.ucdavis.edu/wp-content/uploads/2019/07/CMAB-Economic-Impact-Report_final.pdf

Simply put, dairies and dairy processing facilities play an integral role in local communities. Many of the 185,000 jobs created by the sector are in the San Joaquin Valley and are a critical source of year-round, well-benefited, and well-compensated union employment to disadvantaged and local communities. Moreover, development of dairy digester projects is creating hundreds of local construction jobs and ongoing operations and maintenance employment.

2. *Dairy Cows in California are Declining, Not Expanding.*

Historically, California dairies have faced consolidation, with fewer dairies operating in the state each year and with few, if any, new dairies being built in recent years. Equally important, the total number of dairy cows in California has declined, not expanded, since 2008. Overall, the number of dairy cows in the state has been reduced by about 6-7% since a peak of approximately 1.85 million milk cows in 2008. We expect this decline in both cows and dairies to continue with the total number of cows decreasing by approximately 0.5 % each year. This ongoing reduction in herd size is being driven by historically depressed milk prices and increasing environmental and labor costs. Dairies in California will face contraction as a result of the continued implementation of the Sustainable Groundwater Management Act (SGMA). We expect SGMA to reduce the total farmed acreage in California by up to 1 million acres, including dairy farm operations.

3. *The CPUC Has Recognized the Benefits of Dairy Digester Projects and Has Implemented SB 1383 in a Way that Protects Local Communities.*

California dairy farms must comply with the emission reduction targets of SB 1383, among numerous other California environmental laws designed to limit criteria and toxic air pollutants and protect water supplies. SB 1383 was designed to encourage near-term voluntary short-lived climate pollutant (“SLCP”) reductions, which includes methane reductions in dairy manure management, before the California Air Resources Board (“CARB”) considers potential mandatory measures.

Dairy Cares is concerned about the looming economic impact mandatory measures would have on dairies, particularly small dairy farmers. It is important to recognize that base milk prices are set under federal pricing programs and as a result, California dairies have little opportunity to pass-through regulatory costs. We see the California Public Utilities Commission (“Commission” or “CPUC”) playing a pivotal role in this regard. The Commission has concluded that the “main impediment to achieving this goal [SB 1383] is that dairy biomethane projects historically do not generate enough revenue through sales of the commodity to attract the upfront investment needed for the highly capital-intensive infrastructure necessary to build the project and support ongoing

operating expenses.⁴ It is in that context that the Commission created a framework to fund interconnection and operation costs for a small group of pilot dairy biogas projects. Importantly, the pilot scoring criteria prioritized projects showing benefits in local communities that “minimize criteria pollutant and Toxic Air Contaminant and maximize net criteria pollutant reductions.”⁵ The CPUC also favored projects with demonstrated outreach in local communities.⁶ Further, in the Pipeline Biomethane OIR, the Commission stated that “[i]n collaboration with CARB and the Office of Environmental Health Hazard Assessment (OEHHA), the Commission determined that biomethane could be safely injected into the natural gas pipeline system in Decision (D.) 14-01-034 (adopted January 16, 2014).”⁷ Finally, in the recent CPUC Decision approving interconnection tariffs (D. 20-08-035), the Commission concluded that as a matter of law, the “[c]apture and use of biomethane and other renewable gases are in the public interest.”⁸ In sum, the Commission’s policies may help preserve economic benefits dairies provide to local communities, and the Commission has a track record of implementing SB 1383 in a way that protects local communities.

The Commission’s ongoing efforts to accelerate SLCP reductions at dairy manure operations is a critical piece of SB 1383 implementation and may help preserve and promote the economic well-being of local communities by facilitating and accelerating SLCP reductions before mandatory measures take effect.

4. *State RNG Policies Will Not “Exacerbate and Sustain” Local Environmental Burdens.*

Dairy Cares disagrees with DACAG’s conclusion that the Application at issue would somehow lead to potential expansion of harm from large dairy farms. This unsupported conjecture is at odds with the findings of federal, state and local agencies about the benefits of digester projects. The Commission itself has recognized the potential benefits of dairy digesters to local communities.⁹ The US EPA has observed that “[c]apturing biogas from cattle, hog and poultry farms can reduce greenhouse gas emissions and recovering the methane from the biogas can

⁴ See D.17-12-004, at p. 11, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M201/K352/201352373.PDF>.

⁵ *Id.* at Appendix B, p. 10.

⁶ *Id.*

⁷ See Assigned Commissioner’s Scoping Memo opening Phase 4 of Rulemaking R.13-02-008 (November 21, 2019), available at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M320/K307/320307147.PDF>

⁸ See CPUC Decision 20-08-035, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M346/K309/346309959.PDF>

provide a cost-effective source of renewable energy.”¹⁰ The California Department of Food and Agriculture (“CDFA”) concludes “[t]he technology has many environmental and social benefits.”¹¹

DACAG expresses concern with “Large Confined Animal Feeding Operations” and seems to imply that these dairy farms would expand due to the presence of RNG incentives like those in the application. In light of the noted contraction and consolidation of California’s dairy industry in recent years, Dairy Cares does not anticipate state-biogas policies will lead to the development of new dairy facilities or expansion of existing ones. The policies will however affect existing dairy farm management practices that, as noted, are under ambitious SLCP reduction targets set forth in Section 39730.5 of the California Health and Safety Code (S.B. 1383).

It is also important to recognize that digester projects have multiple layers of environmental and permitting review in addition to the utility’s interconnection process. The San Joaquin Valley Unified Air Pollution Control Board, Central Valley Regional Water Quality Control Board, and local agencies have consistently and fully evaluated individual project proposals under the requirements of the California Environmental Quality Act (“CEQA”) and other federal, state, and regional environmental and permitting laws such as the state and federal Clean Air Act, as well as the Clean Water Act. Projects developed through utility-funded programs are subject to CPUC jurisdiction and disadvantaged communities’ considerations have been a key component of those projects’ evaluations. Similarly, projects funded under CDFA programs provide similar considerations for impacts to local and disadvantaged communities.

California’s incentive programs are starting to show the early success intended by the authors of SB 1383, the State’s landmark SLCP law targeting 40% reductions by 2030. Anaerobic digesters are a renewable technology that uses livestock manure to produce methane, which is a renewable source of energy generation and transportation fuel. The technology has many environmental and social benefits. Biomethane projects, particularly landfill, wastewater and dairy are being sited at existing facilities. Dairy digester projects provide a significant reduction in methane from traditional manure management practices, thus improving local environmental conditions, and resulting in benefits to public health, including water quality, air quality and odor. All of the projects that are being developed in California (and funded in part by CDFA through the Dairy Digester Research and Development Program (“DDRDP”) must demonstrate protection of

¹⁰ See US EPA AgSTAR webpage: <https://www.epa.gov/agstar/learning-about-biogas-recovery>

¹¹ CDFA 2020 DDRDP website, available at: <https://www.cdfa.ca.gov/oefi/ddrdp/>

the environment and comply with stringent water and air quality protection standards, including the California Environmental Quality Act (“CEQA”).

In particular, the design and construction of digesters must be demonstrated to be protective of surface and groundwater quality.¹² All digester system design, construction, and operation must minimize emission of air pollutants.¹³ All state funded projects must comply with SB 859 (2016) which requires CDFA, prior to awarding grant funds from GGRF, to review a comprehensive analysis identifying any and all potential adverse impacts of a proposed project.¹⁴ SB 859 also requires project proponents to conduct outreach in areas that will potentially be impacted by the projects, determine potential adverse impacts, and commit to measures to mitigate identified impacts. CDFA is also required to prioritize projects based on the criteria pollutant emission benefits achieved by the projects. In sum, these projects are carefully reviewed and provide real, quantifiable environmental benefits to local communities.

5. *Digester Projects Provide Local Environmental Co-Benefits.*

While the GHG reduction benefits of reducing dairy methane are significant and growing, dairy methane reduction projects also provide substantial local environmental co-benefits, including the reduction of criteria pollutants. A recent analysis conducted by the California Air Resources Board (“CARB”), as part of the Dairy Methane Reduction Working Group,¹⁵ documents the tremendous potential for reductions of other emissions including, but not limited to:

- Nitrogen Oxide (NOx)
- Particulate Matter (PM2.5 & PM10)
- Hydrogen Sulfide (H2S)
- Nitrous Oxide (N2O)
- Volatile Organic Compounds (VOCs)
- Ammonia (NH3)

As a result, these efforts provide measurable reductions in odor and reactive organic gas (“ROG”), and provide water quality benefits from improvements in manure management.

6. *Local Community Outreach is Mandatory.*

Finally, all dairy digester projects under the CDFA DDRDP are required to conduct

¹² CDFA, Report of Funded Projects, January 2019.

¹³ CDFA, Report of Funded Projects, January 2019.

¹⁴ CDFA, Report of Funded Projects, January 2019.

¹⁵ See CARB Emissions Matrix (November 30, 2018), available at: <https://arb.ca.gov/cc/dairy/documents/05-23-18/dairy-emissions-matrix-113018.pdf>.

community outreach to seek feedback and involve local community groups in the local planning and environmental review process for the project. These requirements were mirrored in the CPUC's implementation of the pilot project framework in D.17-12-004.¹⁶ All project impacts (truck traffic, odor, etc.) and community benefits (jobs, air quality, etc.) are required to be presented and discussed at local community outreach meetings. Applicants are also required to describe how any impacts are being mitigated. Local community engagement has included community-based organizations, *environmental justice organizations*, as well as local schools, colleges, and universities. As part of their report on the DDRDP, CDFA has documented that dairy digesters provide significant odor reduction, reduce impacts to groundwater, and are not expected to create local air quality impacts.¹⁷

In closing, Dairy Cares appreciates the DACAG's consideration of the information demonstrating the multiple benefits digester projects provide to local communities. We hope this information will help inform DACAG's consideration of policies that are "effective and useful in disadvantaged communities."¹⁸

Sincerely,



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¹⁶ See D.17-12-004, App. B, p. 11, available at: <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M201/K352/201352373.PDF> .

¹⁷ CDFA, Report of Funded Projects, January 2019.

¹⁸ California Public Utilities Code Sec. 400(g).